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HOUSER BROS. CO. dba RANCHO DEL
8 REY MOBILE HOME ESTATES

9 UNITED STATES BANKRUPTCY COURT
10 CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION

11 In re
12 JAMIE LYNN GALLIAN,
13 Debtor.

Case No. 8:21-bk-11710-ES

Chapter 7

ORDER GRANTING HOUSER BROS. CO.
DBA RANCHO DEL REY MOBILE HOME
ESTATES'S MOTION OBJECTING TO
DEBTOR'S CLAIMED HOMESTEAD
EXEMPTION IN 16222 MONTEREY LANE,
SPACE #376, HUNTINGTON BEACH, CA
92649, DOCKET NO. 95

HEARING DATE

Date: July 21, 2022

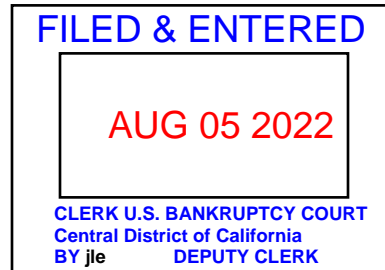
Time: 10:30 a.m.

Ctrm: 5A

Location: 411 W. Fourth Street, Santa Ana, CA
92701

22 On May 12, 2022, Houser Bros. Co. dba Rancho Del Rey Mobile Home Estates
23 ("Houser Bros.") filed a "Motion Objecting to Debtor's Claimed Homestead Exemption"
24 ("Motion"). Docket No. 95. The Motion was set for hearing on June 2, 2022, at 10:30 a.m.
25 Docket No. 99.

26 On May 13, 2022, The Huntington Beach Gables Homeowners Association ("HOA")
27 filed a "Joinder to Houser Bros. Co. dba Rancho Del Rey Mobile Home Estates' Motion
28 Objecting to Debtor's Claimed Homestead Exemption" ("HOA Joinder"). Docket No. 98.



1 On May 16, 2022, Janine Jasso (“Ms. Jasso,” and together with the HOA, the “Joining
2 Parties”) filed a “Joinder to Houser Bros. Co. dba Rancho Del Rey Mobile Home Estates’
3 Motion Objecting to Debtor’s Claimed Homestead Exemption” (“Jasso Joinder”). Docket No.
4 100.

5 On June 1, 2022, Jamie Lynn Gallian (“Debtor”) filed “Debtors Reply Opposition,
6 Memorandum of Points and Authorities to Houser Bros. Co. dba Rancho Del Rey Mobile Home
7 Estates’ Motion Objecting to Debtor’s Claimed Homestead Exemption and Joinder Parties
8 Huntington Beach Gables HOA; Janine Jasso” (“Opposition”). Docket No. 105.

9 On June 2, 2022, at 10:30 a.m., the Court conducted a hearing on the Motion. All
10 appearances were as noted on the record. Before the hearing, the Court published a tentative
11 ruling to continue the hearing on the Motion to July 21, 2022, at 10:30 a.m. to allow Houser
12 Bros. and the Joining Parties to file a reply to Debtor’s late Opposition. The Court’s tentative
13 ruling cautioned that “[n]o other pleadings may be filed,” and that “in the future, the court will
14 not consider any pleadings filed by Debtor after the day they are due.”

15 On June 23, 2022, the Court entered an “Order Continuing Hearing on Motion Objecting
16 to Debtor’s Claimed Homestead Exemption” (“June 23, 2022, Order”), which attached a copy
17 of the Court’s tentative ruling for the June 2, 2022, hearing. Docket No. 124. The June 23, 2022,
18 Order, provided as follows:

- 19 1) The hearing on the Motion is continued to July 21, 2022, at 10:30 a.m. to allow
20 Houser Bros. and/or the Joining Parties to file a reply/replies to Debtor’s late
21 opposition filed on June 1, 2022;
- 22 2) Any replies by Houser Bros. or the Joining Parties must be filed by July 7, 2022;
23 and
- 24 3) No other pleadings may be filed regarding the Motion. Docket No. 124.

25 On June 30, 2022, Chapter 7 Trustee Jeffrey I. Golden filed “Trustee’s Joinder in Houser
26 Bros. Co. dba Rancho Del Rey Mobile Home Estates’ Motion Objecting to Debtor’s Claimed
27 Homestead Exemption” (“Trustee Joinder”). Docket No. 128.
28

1 On July 7, 2022, the HOA filed a “Reply to Debtor’s Opposition to Motion Objecting to
2 Debtor’s Claimed Homestead Exemption” (“HOA Reply”). Docket No. 129.

3 That same day, Houser Bros. filed:

- 4 1) “Reply to Debtor’s Opposition to Motion Objecting to Claimed Homestead
5 Exemption” (“Houser Bros. Reply”), Docket No. 130;
- 6 2) “Declaration of Vivienne J. Alston Re: Motion Objecting to Debtor’s Claimed
7 Homestead Exemption” (“Alston Declaration”), Docket No. 131;
- 8 3) “Declaration of Greg Buysman Re: Motion Objecting to Debtor’s Claimed
9 Homestead Exemption” (“Buysman Declaration”), Docket No. 132; and
- 10 4) “Declaration of Chris Houser Re: Motion Objecting to Debtor’s Claimed
11 Homestead Exemption” (“Houser Declaration”), Docket No. 133.

12 On July 8, 2022, Debtor filed an unauthorized “Reply to Greg Buysman, CA Notary
13 Public Commission Number 2341449; Owner & Operator the UPS Store, Edinger/Springdale.”
14 Docket No. 134.¹

15 Before the July 21, 2022, hearing, the Court published a tentative ruling to grant the
16 Motion. A true and correct copy of the Court’s tentative ruling for the July 21, 2022, hearing is
17 attached as **Exhibit 1**.

18 On July 21, 2022, at 10:30 a.m., the Court held a continued hearing on the Motion.
19 Appearances were as noted on the record. During the hearing, all parties were given an
20 opportunity to be heard. The Court, having read and considered the Motion, the HOA Joinder,
21 the Jasso Joinder, the Opposition, the Trustee Joinder, the HOA Reply, the Houser Bros. Reply,
22 the Alston Declaration, the Buysman Declaration, and the Houser Declaration, and all other
23 pleadings and papers filed in this case, and having heard the arguments made on the record
24 during the July 21, 2022, hearing, for the set forth in the motion and reply papers, the attached
25 tentative ruling, and on the record during the hearing, the Court enters its order as follows:

26 _____
27 ¹ The Court did not formally consider this pleading because Debtor filed it in violation of the June
28 23, 2022, Order’s requirement that no other pleadings were to be filed other than replies by Houser
Bros. and the Joining Parties. Even if the Court were to consider this improper pleading, the
evidence presented therein would have been insufficient to alter or change the Court’s ruling.

1 IT IS ORDERED that the Motion is granted and Houser Bros.'s objection in the Motion
2 to Debtor's claimed homestead exemption in 16222 Monterey Lane, Space #376, Huntington
3 Beach, CA 92649 pursuant to § 704.730 of the California Code of Civil Procedure is sustained.
4 Any claim of exemption by Debtor in the Property is disallowed.

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23 Date: August 5, 2022



24 Erithe Smith
United States Bankruptcy Judge
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28

EXHIBIT 1

**United States Bankruptcy Court
Central District of California
Santa Ana
Erithe Smith, Presiding
Courtroom 5A Calendar**

Thursday, July 21, 2022

Hearing Room 5A

10:30 AM

8:21-11710 Jamie Lynn Gallian

Chapter 7

#32.00 CON'TD Hearing RE: Creditor Houser Bros. Co. dba Rancho Del Rey Mobile
Home Estates Motion Objecting to Debtor's Claimed Homestead Exemption

FR: 6-2-22

Docket 95

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

June 2, 2022

Continue hearing to July 21, 2022 at 10:30 a.m. to allow Movant/Joining Parties to file a reply to Debtor's late opposition filed on June 1, 2022, which reply(ies) must be filed by July 7, 2022. No other pleadings may be filed.

Basis for Tentative Ruling:

1. Because Debtor filed her opposition one day prior to the hearing, the court has not had an opportunity to review it and the Movant was not afforded the opportunity to file a reply to the opposition. Under the Local Bankruptcy Rules, the court may exclude late-filed pleadings and not consider them at all. On this one occasion, the court will make an exception and allow the opposition. However, in the future, the court will not consider any pleadings filed by Debtor after the day they are due.

2. Based solely on the timely filed Motion and joinders, the court would be inclined to grant the Motion.

July 21, 2022

Grant the Motion objecting to Debtor's homestead exemption claim.

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Preliminary Comments re the Tentative Ruling:

This hearing was continued from June 2, 2022 solely because Debtor filed a late opposition *one day* prior to the hearing on June 1, 2022. The continuance was to allow the Movant and Joining Parties to file a reply to the June 1 opposition by July 7, 2022. The court expressly ruled that *no other pleadings were to be filed*. Notwithstanding that ruling, Debtor filed an additional pleading on July 8, 2022 [dkt. 134] without obtaining leave from the court (with notice to the Movant and Joining Parties) to do so. Accordingly, the pleading will not be formally considered by the court. The court notes parenthetically that even if it were to consider the improper pleading, the evidence presented therein would be insufficient to alter or change the court's ruling.

Basis for Tentative Ruling:

A. The Motion is Timely

The court must first determine whether the objection was timely. *In re Smith*, 235 F.3d 472, 475 (9th Cir. 2000) (stating that before reaching the merits of debtor's purported exemption, the court must determine whether the Creditors' objections were timely). An objection to an exemption must be filed within 30 days after the conclusion of a debtor's meeting of creditors or the filing of any exemption amendment. Fed. R. Bankr. P. 4003(b)(1). Here, the Motion was timely filed on May 12, 2022, as the Debtor's meeting of creditors concluded on May 3, 2022.

B. Movant has provided evidence sufficient to grant the Motion

At the time a petition for bankruptcy is filed, "all legal or equitable interests of the debtor in property" become available to satisfy creditors' claims and costs of the proceedings unless the assets are "exempted" from use in satisfying claims of creditors and other authorized charges." *In re Sewell*, 180 F.3d 707, 710 (5th Cir. 1999); FRBP § 541(a)(1). The applicable state law determines bankruptcy exemptions on the date of the filing of the

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original bankruptcy petition. *In re Bassin*, 637 F.2d 668, 670 (9th Cir. 1980). California has, per FRBP § 522(b)(1), has "opted out" of the federal exemption scheme and therefore California debtors may claim only those exemptions allowable under California law.

1. Houser Bros has standing to bring the Motion

FRBP 4003(b) provides that a party in interest may filed an objection to the list of property claimed by debtor as exempt. Fed. R. Bankr. P. 4003(b). Here, Houser Bros is certainly a party in interest. First, Houser Bros is a creditor. In her Amended Schedules [dkt. 75], Debtor listed Houser Bros. as a creditor, with a contingent, unliquidated, disputed claim against the Property of unknown amount. Second, On January 2, 2019, Houser Bros. filed a "Complaint for Forcible Entry/Detainer (Mobilehome Park)" ("OCSC Complaint") against Debtor in Orange County Superior Court, Case No. 30-2019-01041423-CL-UD-CJC ("OCSC Action"). Hays Declaration, Ex. 3. Debtor's claimed homestead exemption, if allowed, will bind Houser Bros. Reply, 7.

2. There is no applicable recorded homestead

Generally, claimed exemptions are "presumptively valid" and the objecting party thus bears the burden of proving that the exemption is improper. *In re Carter*, 182 F.3d 1027, 1029 n. 3 (9th Cir.1999); FRBP § 4003(c). However, the Supreme Court in *Raleigh v. Illinois Dept of Revenue*, 530 US 15, 20-21 (2000) held that because burden of proof is substantive, in the absence of a federal interest requiring a different result, the state law allocation of the burden should apply in bankruptcy objection to claims. The Ninth Circuit Bankruptcy Appellate Panel concluded that, where a state law exemption statute specifically allocates the burden of proof to the debtor, FRBP § 4003(c) does not change that allocation. *In re Diaz*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). *In re Diaz* is persuasive given the U.S. Supreme Court's holding in *Raleigh*. California has placed the ultimate burden of proof on the party claiming the exemption. CCP §§ 703.580(b), 704.780(a). Although the burden of proof lies with the party claiming the exemption, exemption statutes are generally construed in favor of the debtor. *Kono v. Meeker K*, 196 Cal. App. 4th 81, 86 (2011).

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Pursuant to Cal. Civ. Proc. Code § 704.780(a), the burden to show a debtor's entitlement to a homestead exemption rests with the debtor, unless a declared homestead has been recorded. Cal. Civ. Proc. Code § 704.780(a). The objecting party need only provide evidence sufficient to meet the "preponderance of the evidence" standard. *In re Kelley*, 300 B.R. 11, 16 (9th Cir. B.A.P. 2003). If the objecting party produces evidence to rebut the claimed exemption, the burden of production then shifts to the debtor to demonstrate the exemption is proper. Fed. R. Evid. R. 301. The debtor's standard of proof is also "preponderance of the evidence." *United States ex rel. Farmers Home Admin. v. Arnold & Baker Farms*, 177 B.R. 648, 654 (9th Cir. BAP 1994).

Here, Debtor bears the burden of proof to show entitlement to the homestead exemption because the Orange County Treasurer-Tax Collector records do not indicate that there is a "current homeowner's exemption or disabled veteran's exemption" for the Property. A copy of the 2021-22 tax bill for the Property is attached to the Hays Declaration as Exhibit 24.

Although Debtor claims to have recorded a Homestead Declaration, she did so with the Orange County Clerk-Recorder, not the Orange County Treasurer-Tax Collector. Declared homesteads are not applicable to sales by a bankruptcy trustee. *See In re Sain*, 584 B.R. 325, 329 (Bankr. S.D. Cal. 2018) (indicating that only the automatic homestead was available to a debtor who held a recorded declaration of homestead, because the debtor had not elected a declared homestead exemption in his schedules, and declared homesteads are not applicable to sales by bankruptcy trustees); *see also See Kelley v. Locke (In re Kelley)*, 300 B.R. 11, 21 (B.A.P. 9th Cir. 2003) (noting that in the bankruptcy context, a debtor's declaration of homestead "helps him not at all, as the additional benefits conferred in Article 5 [Sections 704.910-704.995] would benefit him only in the situation of a voluntary sale"). Therefore, Debtor bears the burden of proof for the homestead exemption.

3. Debtor failed to meet her burden that the Property is subject to exemption

In *In re Shaefers*, the Ninth Circuit BAP found that a Chapter 7 debtor

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cannot claim homestead exemption in limited liability company (LLC) that he owned, which owned real property at which debtor resided; debtor did not identify any beneficial or equitable interest in the property, and LLC members such as debtor had no interest in the company's assets, rather, debtor's interest in LLC was a personal property interest outside the statutory definition of a homestead. 623 B.R. 777 (B.A.P. 9th Cir. 2020).

Here, Debtor has failed to meet her burden that the Property is subject to exemption. First, the HCD records show that J-Sandcastle LLC, not Debtor, was the Property's owner of record on the Petition Date. As of June 7, 2021—about a month before the Petition Date—the Property's registered owner was J-Sandcastle LLC, and the legal owners were Pierpont and J-Pad LLC. Hays Decl., Ex. 17 at 142. The HCD webpage indicates that "documents and fees" must be submitted to the HCD to transfer ownership of a manufactured home or manufactured home. The June 7, 2021, Title Search did not note any pending applications for title or registration change that might have added Debtor as the registered or legal owner of the Property before the Petition Date. And, Debtor paid no fees to the HCD between June 7, 2021, and the Petition Date that could have effectuated a title change. See Hays Decl., Ex. 26.

Moreover, the July 2021 HCD Transaction had a transaction date of July 14, 2021—five days after the Petition Date—and included a certificate of title showing J-Sandcastle LLC as the Property's registered owner and Pierpont and J-Pad LLC as the Property's legal owners. Hays Decl., Ex. 21 at 171. Included in this post-petition transaction was a document to add Debtor as the Property's "New Registered Owner." *Id.* at 172. Also attached was a County of Orange "Tax Clearance Certificate" issued and executed on the Petition Date, which gave the Property's "Current Registered Owner" as J-Sandcastle LLC. *Id.* at 191. The August 2021 HCD Transaction did include a certificate of title showing Debtor as the Property's registered owner, but according to the certificate, title was issued on August 3, 2021, nearly a month after the Petition Date. Hays Decl., Ex. 22 at 195.

Second, between February 1, 2021, and the Petition Date, all payments that Debtor submitted to Houser Bros. listed J-Sandcastle LLC as the payor/were on behalf of J-Sandcastle LLC. Only after the Petition Date

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Chapter 7

did Debtor submit a payment on her own behalf. See Hays Decl. Ex. 23 at 203-222.

Third, Debtor provides no credible evidence that she acquired an interest from the LLC on February 25, 2021. In Debtor's Original Schedules, filed on the Petition Date (July 9, 2021), Debtor provided, under penalty of perjury, that "Registered Title with HCD Debtor's single member LLC, J-Sandcastle Co, LLC." Motion at 33 (Exhibit 2). In addition, Debtor, in the Opposition, asserts J-Sandcastle LLC's executed a notarized release of title document, claiming: "On the petition date July 9, 2021, the registered title owner of the manufactured home located at 16222 Monterey Lane, Unit #376, Huntington Beach, CA 92649 ('Property') was Jamie Lynn Gallian as of February 25, 2021, the date J-Sandcastle Co LLC signed and dated to release the Certificate of Title to Jamie Lynn Gallian, notarized the same date." Opp'n., 29. However, Mr. Buysman did not actually notarize these documents. Instead, Mr. Buysman's notary book shows that on February 25, 2021, he notarized for Debtor an "Affidavit of Death" and a "Transfer Grant Deed." Buysman Decl., ¶¶7-11. Mr. Buysman did not notarize the July 2021 HCD Submission either. *Id.* Debtor's improperly filed July 8 response, even if considered by the court, would be insufficient to counter the statements and documentary evidence set forth in the Buysman Declaration.

Fourth, any alleged unrecorded transfer of title to Debtor personally was ineffective. See *In re Farokhirad*, Case No. 8:21-bk-10026-MW, ECF No. 98 (Bankr. C.D. Cal. Apr. 29, 2021) (sustaining a trustee's objection to an individual debtor's claimed homestead exemption in property held by a wholly owned LLC, and indicating that a provision of the LLC agreement purporting to transfer an interest in the property to the debtor prepetition was ineffective because an unrecorded deed could not bind the trustee). In California, unperfected (i.e. unrecorded) liens against real property are unenforceable against a bona fide purchaser for value, and Trustee is "clothed with the status of a hypothetical bona fide purchaser of real property under Section 544(a)(3). *In re Tleel*, 79 B.R. 883, 887 (B.A.P. 9th Cir. 1987); Cal.Civ.Code §§ 1214, 1217. Section 544, however, must be applied "without regard to any knowledge of the trustee or of any creditor." 11 U.S.C. § 544(a). Therefore, actual notice cannot overcome the Trustee's bona fide purchaser status. *In re Tleel*, 876 F.2d 769, 772 (9th Cir. 1989). Pursuant to Section 544, the trustee

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is treated as a lien creditor and/or bona fide purchaser as of the date of the commencement of the case. *In re Tleel*, 79 B.R. 883, 886 (B.A.P. 9th Cir. 1987).

While Debtor asserts the Property was actually transferred from J-Sandcastle LLC to Debtor on February 25, 2021, the transfer was not recorded until after the Petition Date. Hays Decl., Ex. 19 at 145. As such, Trustee would be treated as a bona fide purchaser as of the Petition Date.

In conclusion, Debtor failed to carry her burden because, on the Petition Date, the Property's registered owner was J-Sandcastle LLC, and the legal owners were Pierpont and J-Pad, LLC. As a result, the Property was not part of the estate and not eligible for an exemption. The court, therefore, need not address Movant's alternative argument re 11 U.S.C. 522(p) except to say that had Debtor provided sufficient evidence of a transfer on February 25, 2021, the limitations of 522(p) would have applied.

Party Information

Debtor(s):

Jamie Lynn Gallian

Pro Se

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Aaron E DE Leest
Eric P Israel